## THE TRIBUNE.

MONDAY MORNING, DECEMBER 12.

## FOR PRESIDENT, HENRY CLAY, OF MENTUCKY.

For General News we refer our readers to the First Page.

For a Poem by Longfellow, a Speech by Gen. Cass, and Horrors of Shipwreck, see Last Page.

.\*. We crave the indulgence of Advertisers te-day, as many of their favors have been crowded out by the great length of the Cooper Trial.

Persons wishing to purchase the new cheap publica-tions of the day, will find them all at the publication office of the Tribune, No. 160 Nassau-street, opposite the City Hall.

## COOPERAGE OF THE TRIBUNE. Trinl of the Publishers for Libel at the

J. FENIMORE COOPER, | In Circuit Court, in and for the J. FENIMORE COOPER, In Circuit Court, in and for the persus

County of Sara oga, Friday, Dec.

Honace Greeley Hon. John Willard, Presiding THOMAS MCELRATH,

The responsible Editor of The Tribune returned vesterday morning from a week's journey to and sojourn in the County of Saratoga, having been thereto urgently persuaded by a Supreme Court writ, requiring him to answer to the declaration of Mr. J. Fenimore Cooper in an action for Libel

This suit was originally to have been tried at

the May Circuit at Ballston; but neither Fenimore, (who was then engaged in the Coopering of Col. Stone of the Commercial,) nor we, had time to attend to it-so it went over to this term, which opened at Ballston Spa on Monday, Dec. 5th. We arrived on the ground at 11 o'clock of that day, and found the plaintiff and his lawyers ready for us, our case No. 10 on the calendar, and of course a good prospect of an early trial; but an important case involving Water-rights came in ahead of us. (No. 8) taking two days, and it was half past 10 A. M. of Friday before ours was reached-very fortunately for us, as we had no lawyer, had never talked over the case with one, or made any preparation whatever save in thought, and had not even found time to read the papers pertaining to it till we arrived at Ballston. The delay in reaching the case gave us time for all; and that we did not employ lawyers to aid in or conduct our defence proceeded from no want of confidence in or deference to the many eminent members of the Bar there in atten dance, beside Mr. Cooper's three able counsel, but simply from the fact that we wished to present to the Court some considerations which we thought had been overlooked or overborne in the recent Trials of the Press for Libel before our Supreme and Circuit Courts, and which, since they appealed more directly and forcibly to the experience of Editors than of Lawyers, we presumed an ordinary Editor might present as plainly and fully as an able Lawyer. We wished to place before the Court and the Country those views which we understand the Press to maintain with us of its own position, duties, responsibilities and rights, as affected by the practical construction given of late years in this State to the Law of Libel, and its application to Editors and Journals. Understanding that we could not appear both in person and by counsel, we chose the former; though on trial we found our opponent was permitted to do what we supposed we could not .- So much by way of explanation to the many able and worthy lawyers in attendance on the Circuit, from whom we received every kindness, who would doubtless have aided us most cheerfully if we had required it, and would have conducted our case far more skilfully than we either expected or cared to do. We had not appeared there to be saved from a verdict by any nice technicality or legal subtlety.

-The suit of Mr. Cooper required us to respond

to the following

DECLARATION:

SUPREME COURT: Of the term of January, in the year of our Lord eighteen hundred and forty-two:

Saratoga County, ss. J. Fenimore Cooper, plaintiff in this suit by Richard Cooper, his attorney, complains of Horace Greeley and Thomas McElrath, defendants in this suit, believed to the complaint of the case: ing in custody, &c. of a plea of trespass on the case:
For that whereas the said defendants, contriving and ma liciously intending to injure the said plaintiff in his good name, tame and credit, and to bring him into general contempt and ignominy, heretofore, to wit on the twentiett day of November, in the year of our Lord eighteen hun day of November, in the year of our Lord eighteen hundred and forty-one, and to wit, at Ballston Spa, in the County aforesaid, talsely, wickedly and maliciously published, and caused and procured to be published, in a certain newspaper called the New-York Tribune, the following false, malicious and defamatory libel of and concerning the sales plaintiff, that is to say:

olaintiff, that is to say:

"Correspondence of The Tribune.
"Ker. Fenimore Cooper and his Libels. "The Circuit Court now sitting here is to be occupied chiefly with the legal griefs of Mr. Fenimore Cooper, (the said plaintiff meaning.) who has determined to avenge him to his waning popularity as a novelist.

"The 'handsome Mr. Ettingham' (the said plaintiff meaning) has three causes at issue here.

"The basdsome Mr. Effingham' (the said plaintiff meaning) has three causes at issue here, two of which are against Col. Webb, Editor of the Courier and Enquirer, and one against Mr. Weed, Editor of the Albany Evening Journal. "Mr. Weed not appearing on Monday, (the first day of Court.) Cooper moved for jindgement by default, as Mr. W's (meaning said Weed's) counset had not arrived. Col Webb, who on passing through Albany called at Mr. W's. (meaning said Weed's) house, and learned that his wife was seriously and his daughter dangerously ill, requested Mr. Sacia to state the fact to the Court and ask a day's/delay. Mr. S. (meaning said Sacia) made at the same time an appeal to Mr. Cooper's (meaning said plaintiff's) humanity. But that appeal of course was an unavailing one. The novelist (the said peal of course was an unavailing one. The novelist (the salplaintiff meaning) pushed his advantage. The C urt, however, ordered the cause to go over till the next day, we the understanding that the default should be entered then Mr. Weed did not appear. Col. Webb then despatched a messenger to Mr. W. (said Weed meaning) with this information. The messenger returned with a letter from Mr. W (meaning said Weed) stating that his daughter lay very ill. and that he would not leave her while she was suffering of and that he would not leave her while she was suffering or in danger. Mr. Cooper therefore immediately moved for his default. Mr. Sacia interposed again for time, but it was denied. A jury was empaneled to assess Mr. Effingham's (meaning said plaintiff's) damages. The trial of course was ex-parte, Mr. W. (said Weed meaning) being absent and defenceless. Cooper's lawyer made a wordy, windy, abusive appeal for exemplary damages. The Jury retired, under a strong charge against Mr. Weed from Judge Willard, and after remaining in their, room till 12 october at mich and after remaining in their room till 12 o'clock at night sealed a verdict for \$400 for Mr. Effingnam, (meaning said plaintiff,) which was delivered to the Court this morning."

"This meagre verdict, under the circumstances, is a severe and mortifying rebuke to Cooper, who had every

"The value of Mr. Cooper's (meaning said plaintiff's) character, therefore, has been judicially ascertained.

"It is worth exactly four hundred dollars.

"Gol. Webb's trial comes on this afternoon, his counsel,

"Gol. Webb's trial comes on this afternoon, his counser, C. L. Jordan, Esq., having just arrived in the up train. Cooper will be blown sky high. This experiment upon the Edi.or of the Courier and Enquirer, I predict, will cure the "handsome Mr. Effingham," (meaning said plaintiff,) of his meaning for Libble."

mosomania for Libels."

And the said plaintiff further says, that the said defend And the said plaintiff further says, that the said defendants further contriving and intending, as aforesaid, afterwards, to wit, on the thirteenth day of November, in the year of our litted eighteen hundred and forty-one, and to wit, at the place and in the county aforesaid, falsely, wickedly and maliciously published and eaused and procured to be published in the aforesaid newspaper, called the New-York Tribune, a certain other false, scandalous and malicious libel, of and concerning the said plaintiff, containing among other things, the following false, malicious and defamatory matter, of and concerning the said plaintiff, that is to say:

"Now we cannot retract all our correspondent has stated or interred, for we do most undoubtedly believe that Mr. Cooper's (meaning said plaintiff's) course in pushing his libel suit against Mr. Weed to a default on the first and then the second day of the term, while Mr. Weed (meaning said Weed) was detained away by the dangerous illness on his family, was the reverse of bonorable or magnanimous."

By means of the publication of which, said false, malicious and defamatory libels, the said plaintiff hath been, and is greatly injured in his good name, tame and credit, and brought into general hatred, contempt and ignominy; and hath been otherwise greatly injured and damnified, to wit, at the place and in the county aforesaid, to the damage of the said plaintiff of three thousand dollars, and there we have the said plaintiff of three thousand dollars, and the county aforesaid, to the damage of the said plaintiff of three thousand dollars, and the county aforesaid, to the damage of the said plaintiff of three thousand dollars, and the county aforesaid, to the damage of the said plaintiff of three thousand dollars, and the county aforesaid. at the place and in the county aforesaid, to the damage of the said plaintiff of three thousand dollars, and therefore he brings his suit, &c. R. COOPER, Plaintiff's Attorney.

To which we interposed the following plea in

MCELRATH ads. J. FENIMORE COOPER.—And the said Horace Greeley and Thomas McElrath, defendants in this suit, by Peter Clark, their Attorney, come and defend the wrong and injury, when, &c., and say that they are not. nor is either of them, guilty of the said supposed grievances above laid to their charge, or any or either, or any part thereof, in manner and form as the said plaintiff bath above thereof complained against them, &c.; and of this the said defendants put themselves upon the Country, and the said

plaintiff doth the like, &c.
PETER CLARK, Attorney for Defendants.

Richard Cooper, nephew and attorney of the plaintiff, in a speech of decided pertinence and force.-He stated the circumstances in which the alleged libels had their origin, read them, sentence by sentence, commented ably on their language, character and probable effect, and did his client's cause ample justice in every way, making the most of it, without damaging it by abusive or irrelevant mater. Mr. R. Cooper has had much experience in this class of cases, and is a middle aged young nan of considerable talent. His manner is the only fault about him, being too elaborate and pompous and his diction too bombastic to produce the best effect on an unsophisticated auditory. If he will only contrive to correct this, he well yet make a figure at the Bar-or rather, he will make less figure and do more execution. The force of his speech was marred by Fenimore's continually interrupting to dictate and suggest to him ideas when he would have done much better if left alone For instance: Fenimore instructed him to say that our letter from Fonda above recited purported to be from the "correspondent of the Tribune." and thence to draw and press on the Jury the inference that the letter was written by some of our own corps, whom we had sent to Fonda to report these trials. This inference we were obliged to repel in our reply, by showing that the article plainly read "correspondence of the Tribune," just as when a fire, a storm or some other notable event occurs in any part of the country or world, and a friend who happens to be there, sits down and despatches us a letter by the first mail to give us early advices, though he has no connection with us but by subscription and good will, and perhaps never wrote a line to us in his life till now.

From what we have already said, the reader will have obtained a very good general idea of Mr. R. Cooper's speech, and can very readily fill up the outline as fully as may be desirable. We took but brief notes of it.

But there were some points in this opening which deserved a more special consideration-and first, the undoubted truths stated by the advocate that the issue here presented was one of no trivial character, but involved the most important considerations-that the whole Newspaper Press was in reality a party to this suit, and the representations made by it should be taken with a corresponding allowance. Following in this train, Mr. R. C. proceeded to declaim against the popular feeling excited in favor of the defendant and his cause. and to warn the Jury against being affected by it. So in the summing up Mr. Fenimore Cooper went over the same ground and enlarged it, representing himself as standing here the champion of the Rights of the People, to be protected from slanderous abuse and calumny from the Press, portrayed the power and the prevalent dread of that mighty engine, the interest and natural desire of every citizen to be shielded from detraction and public ignominy, reminded them that, in a well-governed community, a wrong done to one, however humble, is a wrong to all, which all are bound to punish and redress, &c. &c., and, after all this truth, wound up with the strange inconsistency of imploring the Jury not to be swaved by popular feeling and out-door clamor into a verdict in hostility to the People's cause! After him came His Honor Judge Willard, and he, toe, (very properly) commanded the Jury to cast aside all out-door and personal considerations, and render a verdict based strictly and alone on the law laid down and the evidence submitted to them. Now it seems incredible that so strong a current of popular feeling should be running at Ballston and every where that this class of suits is tried against the injure party and the laws of the land and in favor of the wilful and malicious libelers! The public are not apt to be so complaisant toward those who commit and avow flagrant crimes, especially those crimes of which the greatest popular dread exists, and which are in themselves so mean as wanton defamation. It is not apt to heed and believe the representations of criminals in the face of undeniable evidence and the Law's solemn judgements. And remember this is no sudden or casual outbreak, some indulgence to a popular favorite; but appears to be regarded by those who condemn it as the settled and uniform current of popular opinion. We can see no way to explain this strange anomaly but by admitting the truth of our original conviction that the higher Courts of this State have committed a mistake in expounding and applying the principles of Law to the contests between the Press and those who have been irritated by its censures. We believe, therefore, that the public sentiment in regard to these cases is wiser than are the authoritative expositors of the Law, and that the public feeling predicts a correction of the error by statute if the errors of exposition have gone beyond the reach of easier remedy.

most plainly what those errors are: We had, to the Declaration against us, pleaded the General Issue-that is, Not Guilty of libeling Mr. Cooper. at the same time fully admitting that we had published all that he called our libels on him, and desiring to put in issue only the fact of their being or not being libels, and have the verdict turn on that issue. But Mr. Cooper told the Jury (and we found, to our cost, that this was New-York Supreme and Circuit Court law) that by pleading Not Guilty we had legally admitted ourselves to be Guilty-that all that was necessary for the plaintiff under that plea was to put in our admission of publication, and then the Jury had nothing to do but to assess the plaintiff's damages under the direction of the Court. In short, we were made to understand that there was no way under Heaven-we beg pardon: under New-York Supreme Court Law-in which the Editor of a news paper could plead to an action for libel that the matter charged upon him as libelous was not in its nature or intent a libel, but simply a statement, according to the best of his knowledge and belief, of some notorious and every way public transaction, or his own honest comments thereon; and ask the Jury to decide whether the plaintiff's averment or his answers thereto be the truth! To illustrate the beauties of 'the perfection of human reason'always intending New-York Circuit and Supreme Court reason-on this subject, and to show the perfect soundness and pertinence of Mr. Cooper's logic according to the decisions of these Courts, we will give an example:

The next step in Mr. R. Cooper's opening shows

Our Police Reporter, say this evening, shall bring in on his chronicle of daily occurrences the following:

"A batchet-faced chap, with mouse-colored whiskers, "A patchet-facet chap, with mouse-colored winsacts, who gave the name of John Smith, was brought in by a watchman, who found him lying drunk in the gutter. After a suitable admonition from the Justice, and on payment of the usual fine, he was discharged."

Now our reporter, who, no more than we, ever before heard of this John Smith, is only ambitious to de his duty correctly and thoroughly, to make his description accurate and graphic, and perhaps tiff himself in conversation with Mr. McElrath, in to protect better men who rejoice in the cognomen of John Smith from being confounded with ted Mr. M. from any thing more than legal this one in the popular rumor of his misadventure. liability.) But Richard was on his legs as a

we should probably strike it out altogether, as relating to a subject of no public moment, and likely to crowd out better matter. But we do not see it, and in it goes: Well: John Smith, who 'acknowledges the corn' as to being accidentally drunk and getting into the Watch-house, is not willing to rest under the imputation of being hatchet-faced and having mouse-colored whiskers, retains Mr. Richard Cooper-for he could not do better-and commences an action for libel against us. We take the best legal advice, and are told that we must demur to the Declaration-that is, go before a Court without Jury, where no facts can be shown, and maintain that the matter charged as uttered by us is not libelous. But Mr. R. Cooper meets us there and says justly: "How is the Court to decide without evidence that this matter is not libelous? If it was written and inserted for the express purpose of ridiculing and bringing into contempt my client, it clearly is libelous. And then as to damages: My client is neither rich nor a great man, but his character, in his own circle, is both dear and valuable to him. We shall be able to show on trial that he was on the point of contracting marriage with the daughter of the keeper of the most fashionable and lucrative ovster-cellar in Orange-street, whose nerves were so shoeked at the idea of her intended having a 'hatchet face and mousecolored whiskers,' that she fainted outright en reading the paragraph (copied from your paper into the next day's 'Sun,') and was not brought to until a whole bucket of ovsters which she had just opened had been poured over her in hurried mistake for water. Since then, she has frequent relapses and shuddering, especially when my client's name is mentioned, and utterly refuses to see or speak of him. The match is dead broke, and my client loses thereby a capital home, where victuals are more plentiful and the supply more steady than it has been his fortune to find them for the last year or two. He loses, with all this, a prospective interest in the concern, and is left utterly without business or means

of support except this suit. Besides, how can

you tell, in the absence of all testimony, that the

Editor was not paid to insert this villanous de-

scription of my client, by some envious rival for

the affections of the oyster-maid, who calculates

both to gratify his spite and advance his lately

hopeless wooing? In this case, it certainly is a

libel: We affirm this is the case, and you are

bound to presume that it is. The demurrer must

be overruled.'-And so it must be. No judge

could decide otherwise. Now we are thrown back upon a dilemma Either we must plead Justification, in which case we admit that our publication was on its face a libel: and now, woe to us if we cannot prove Mr Cooper's client's face as sharp and his whiskers of the precise color as stated. A shade more or less ruins us. For, be it known, by attempting a Justification we have not merely admitted our ofence to be a libel, but our plea is an aggravation of the libel, and entitles the plaintiff to recover nigher and more exemplary damages. But we have just one chance more: to plead the General Issue -to wit, that we did not libel the said John Smith-and go into Court prepared to show that we had no malice toward or intent to injure Mr. Smith, never heard of him before, and have done all we knew how to make him reparation-in short that we have done and intended nothing which brings us fairly within the iron grasp of the law of libel. But here again, while trying our best to get in somehow a plea of Not Guilty, we have actually pleaded Guilty!-so says the Supreme (no matter of what) concerning John Smith proves irresistibly that we have libeled him-we are not entitled in any way whatever to go to the Jury with evidence tending to show that our publication is not a libel-or, in overthrow of the legal presumption of malice, to show that there actually was none. All that we possibly can offer must be taken nto account merely in mitigation of damages. Our hide is on the fence, you see, any how; for, though, if the Judge be kindly disposed and do not rule and charge too hard against us, we may escape with a moderate verdict, yet our own heavy costs and forcible abstraction from our business there is no help for; then there are the heavier costs of the other party; and, though John may come off poorly, Richard at any rate will get a new suit at our expense while we must wear the old white coat another year.-Such is the beauty of the law of libel, as expounded and administered against the Public Press by the Supreme Court of this

-But to return to Richard's argument at Ballson: He put very strongly against as the fact that our Fonda correspondent (see Declaration above) considered Fenimore's verdict there a meagre one. Gentlemen of the Jury," said he, "see how these Editors rejoice and exult when they get off with so light a verdict as \$400. They consider it a triumph over the law and the defendant .-They don't consider that amount any thing. If you mean to vindicate the laws and the character of my client, you see you must give much more than this."-This was a good point, but not quite fair. The exultation over the " meagre verdict" was expressly in view of the fact that the cause was undefended-that Fenimore and his counsel had it all their own way, evidence, argument, charge and all. Still, Richard had a good chance here to appeal for a large verdict, and he did it well.

On one other point Richard talked more like a cheap lawyer and less like a-like what we had expected of him-than through the general course of his argument. In his pleadings he had set forth Horace Greeley and Thomas McElrath as Editors and Proprietors of the Tribune, and we readily enough admitted whatever he chose to assert about is except the essential thing in dispute between is. Well, on the strength of this he puts it to the Court and Jury, that Thomas McElrath is one of the Editors of The Tribune, and that he, being (having been) a lawyer, would have been in Court to defend this suit, if there was any valid defence to be made. This of course went very hard against us; and it was to no purpose that we informed him that Thomas McElrath, though legally implicated in it, had nothing to do practically with this matter,-(all which he knew very well long before,) and that the other defendant is the man who does whatever libeling is done in The Tribune, and holds himself every where responsible for it. We presume there is not much doubt even so far off as Cooperstown as to who edits The Tribune, and who wrote the Editorial about the Fonda business. In point of fact, the real and palpable defendant in this suit never even conversed with his partner a quarter of an hour altogether about this subject, considering it entirely his own job; and the plainthe presence of his Attorney, had fully exonera-

The case was opened to the Court and Jury by If the paragraph should come under our notice, lawyer-he pointed to the seal on his bondand therefrom insisted that Thomas McElrath was art and part in the alleged libel, not only legally but actually, and would have been present to respond to it if he had deemed it susceptible of de fence! As a lawyer, we suppose this was right but, as an Editor and a man, we could not have

Richard closed with some general reprehension of libels and slanders, which we only remember vere forcible, and would have been weighty if apolicable to this case : put in the articles or parts articles alleged to be libelous, with our full ad mission of publication; likewise his letter demandng a retraction from us, also admitted; with adnissions of every thing else he had asked of us endering all other testimony unnecessary to these points. He did not, and of course need not under the law of libel, offer to prove otherwise any pur pose on our part to injure the plaintiff, any proba le motive for so doing, or any damage sustained by him; but here rested his case, and gave way to H. GREELEY, in Defence:

If the Court please-I stand before you the person charged with libel in this case, to answer to that charge. I am the Editor of the Tribune, and published therein the articles on which this prosecution is founded. My partner, Mr. McElrath, though legally on tria pefore you, is not Editor and had no knowledge o these articles till he read them, as did others, it the printed paper. He, at least, is guiltless of al actual malice in the premises, though he must share

with me in your verdict. My defence, as you will have inferred, is not that I did not publish the articles complained of, since I have fully and cheerfully admitted that I did, but that I published them without malice to ward or intent to wrong Mr. Cooper, and that those passages complained of as libelous are not ibels, but honest, even if mistaken, inferences frawn from what I believed to be facts, which essentially were so .- and no farther prejudicial to Mr. Cooper than they were sustained and fortified thereby. What are those facts? On the 15th of November, 1841, a suit for libel-one of an as sortment-brought by J. Fenimore Cooper against Thurlow Weed was called for trial at the Mont comery Circuit at Fonda-that being the first day of the term. Mr. Weed not appearing, it was postponed to the next day, when it was triedstill in the absence of Mr. Weed or of any defence, and a verdict given for the plaintiff-damages \$400. Hereupon a friend at Fonda wrote me a letter detailing the facts in the case and the cirumstances under which it had been tried, which published, and on this letter the first count in the leclaration against me is based. The whele letter, which was published word for word as it reached me is embodied in the declaration against me, and a copy of The Tribune containing it is herewith submitted. [See declaration above.]

A few days afterward, a card from Mr. Cooper n relation to the above letter appeared in the Albany Argus. This card is as follows:

"From the Albany Argus.

"From the Albany Argus.

"The New-York Tribune and Albany Evening Journal, aving both published false statements concerning the proceedings connected with the inquest taken in my suit gainst Thurlow Weed, at the late Montgomery Circuit, I isk room for the following statement of facts.

"The cause was first noticed for trial in May last. Mr. Weed they appeared without counted and asked for delay Weed then appeared without counsel, and asked for dela-on the plea that he had forgotten that the cause had been no ticed! The Judge granted a delay of six months on this plea, saying at the time that the application was exceedingly feeble.

At the late Circuit we appeared the first day, and Mr. "At the late Gircuit we appeared the first day, and Mi-Weed did not. The Evening Journal says, "Cooper's gause against us stood nearly at the foot of the calendar. and would have not been reached in the ordinary course of business until the last of the week." It was number thirteen, in a calendar of forty, and was reached the first day. The allegation of The Tribune, that "Cooper moved for judgement by default," is utterly untrue. When the case was called, we merely said we were ready, and when the statement was made that Mr. Weed was detained by the indisposition of a child, the Court distinctly refused to grant a delay on such a plea, presented in such a manner. My counsel were opposed to the delay, believing the whole to be a trick. An appeal was then made personally to myself, and I consented to a delay until the cars should arrive on the following day, in direct opposition to the advice of would have not been reached in the ordinary course of on the following day, in direct opposition to the advice on y counsel, openly expressed in Court, and at a momes when the Judge said that this delay entirely rested with myself. It was clearly expressed by me at the time of granting this delay, and as clearly asserted to by Mr. Sacia in behalf of Mr. Weed, that I was to take my jequest the in benuit of Mr. Weed, that I was to take my inquest the next day, unless some one should appear to defend the suit. Mr. Sacia had openly stated on the authority of Mr. Weed, and as coming from Mr. Weed, that Mr. Hill, a lawyer of merit, was to appear for the defendant; but, at the time when this statement was made, a person of respectability nformed me that he was confident that Mr. Hill had no such

intention. The cause lay over for twenty-four hours.

"The next day two trains arrived from Albaay, with intervals of two or three hours, before the cause was moved by us. Neither Mr. Weed nor Mr. Hill had arrived. Imag say here that the latter did not attend the Circuit at all.would grant no delay without the consent of parties. I then stated, I left the matter with the Court, and that I had no taith in the excuses. The result was an inquest, and a ver-

"It remains only to say that Mr. Weed had pleaded the stated by the Judge to the Jury as reasons why the defer sant's rights could not materially suffer by taking the in-quest. The attorneys on record for Mr. Weed are Messrs Parmalee and Loveridge, of the city of Albany. Neithe of those gentlemen has ever appeared in this case at Fonda, for was any affidavit, but one founded on hearsay, offered. "I have directed legal proceedings to be commence, against the Editors, Publishers, &c. of The Tribune aw Evening Jeurnal. "Yours, respectfully, "J. FENIMORE COOPER"

This Card asked for no reparation and seemed o desire none at my hands. It declared without qualification that the writer had directed the comnencement of a prosecution against me. I there. fore awaited the missive of Mr. Richard Cooper, now in evidence before you, which seemed to be dictated by a different spirit, though its demands were unreasonable. But, inferring from this that the Attorney at least preferred Justice to Law, I immediately published Mr. Fenimore Cooper's Card above given, as the readiest and fullest reparation I could make, and accompanied it by the ollowing comment, on which is based the second

count in the declaration against me: " Mr. J. Fenimore Cooper. "Instead of the grace which we have for the last two days been quietly expecting from this gentleman, we received yesterday a very courteous and civil, though not altogether reasonable, letter from his counsel, Mr. R. Cooper together reasonable, letter from his counsel, Mr. R. Cooper, in relation to our obsoxious publication. We should be most happy to publish this letter, but, considering that it is one of business and may be regarded by the writer as a private one, we shall not take the liberty of so doing. Suffice it, then, that it very civilly calls on us for a 'retraction' of what was said, not by us, but by our Fonda correspondent, consisting of a statement of the circumstances attending the taking of the inquest in the case of Cooper vs. Weed, and comments thereon. How shall we be required to retract what another has stated? and how retract the entire statement, when the greater part of it is sustained by Mr. Cooper's own version of the matter! Finally, we ar required to retract our correspondent's inference that the Jury, in awarding Mr. Cooper but \$400 damages for a libel which was not defended, have settled that amount as the value of his character. This inference is either just or unwarranted: if just, it ought not to be retracted; if unwar-ranted, it can do no possible harm to Mr. Cooper. In either case, we cannot regard it as any more a libel than if we had called one of his books a failure.

"Mr. Cooper takes hold of the wreng end of things, and

"Mr. Cooper takes hold of the wrong end of taings, and will persist in doing so. If he felt aggrieved by any thing we had published, he had only to write to us, pointing out the errors, and we should have published his letter most cheerfully. This we do uniformly, as a matter of right and principle, in every case of alleged grievance from statements in our columns. Instead of this, the first complaint we have from him reaches us in the Albany Argus, accounts. panied by a statement that he has directed a prosecution to

or commenced against us as libelers!

"This is just the way of correcting the errors of the Press, that we do not admire. Now we cannot 'retract' all our correspondent has stated or inferred; for we do most unstance. doubtingly believe that Mr. Cooper's course, in pushing his libel suit against Mr. Weed to a default on the first and then the second day of the term, while Mr. W. was detained away the second day of the term, while sir, w. was defined away say the dangerous illness of his family, was the reverse of honorable or magnanimous. Such is our conviction; if a Court and Jury shall pronounce it a libel, we shall be careful soit of say so again, but we cannot help thinking so all the time. And now, as the very best anende to Mr. Cooper that we can make, we publish his own version of the affair, which is as follows:

which is as follows:

[Here follows Mr. Cooper's Card, quoted above] Some weeks after this, I was served with the writ which brings me before you. Such are the facts in the case. And now, if the Court please, I submit as evidence, copies of The Tribune of Nov. 30th, 1841, containing the whole article, a part of which is complained of as libelous, with Mr. Cooper's self-vindication. This is all the testimony I desire to offer to the Jury, and I trust to this there can be no objection.

These, Gentlemen of the Jury, are the several and only articles, (the latter including Mr. Cooper's self-vindication,) for publishing which I am now on my defence before you. There is no dispute with regard to the essential facts, for I have I believe it is the usual course of reputable jourreadily admitted all the plaintist has desired to prove, except the malicious and libelous intent of he articles complained of. In deciding on their true character, bearing in mind that I am charged with "falsely, wickedly and maliciously" publishing articles intended to subject the plaintiff to ignominy and contempt, I beg you to consider, 1st, That indignation is not malice. If ye

ould naturally feel indignation and express it

yet without being justly chargeable with malice. 2dly. I ask you to consider my vocation of public journalist. In that vocation it my duty to speak out in reprehension of injustice, oppression and wrong, when another citizen may innocently for bear. To this end, the Freedom of the Press is carefully guarded by our Federal and State Constitutions. This Freedom of the Press is no unmeaning abstraction or barren generality-it implies the Freedom of Opinion and Utterance. The practical distinction between a fearless discussion of acts and motives, and an abuse of this Freedom to purposes of private grudge and personal malice, is under stood and acted on throughout the Country. Take up any newspaper you choose in the nearest tavern, and you will therein see John Quincy Adams de nounced as fanatical and factious; Henry Clay as orrupt and aristocratic; or Martin Van Buren as a juggler, a magician; Levi Woodbury as a blundering and incompetent in Finance, &c. &c. Now. Gentlemen of the Jury, on reading these assertions in the newspapers against the most eminent men in the land, you are not led to adopt these couclu sions or any of them implicitly; it is not expected that you should do so. You understand that these are but expressions of the Editor's opinions. founded on facts of general notoriety; of which facts you take your own view, and adopt the Editors' conclusions only so far as they are warranted in your judgement by the facts to which they appeal. Beyond that, the epithets or opinions of the writers have no force or effect. For instance, one may say that John Tyler, President of the U. States is a traitor, in that he has removed from office many unexceptionable incumbents who ardently supported his election and the principles on which it was effected, and put in their places those who vehemently opposed him and them. Now, you read this denunciation in my paper, for instance; and does it have any of the effect of libel on your minds? Certainly not. You accept and understand it as my conclusion from certain notorious facts; you concur in or dissent from that conclusion as in your own judgement the facts shall require. My statements of fact, if I make any, will I trust have weight with you; my opinions you receive and regard as my opinions only But suppose I were to assert that I had secret but positive evidence that John Tyler is bargaining with a foreign foe to deliver up the Governmen and the National defences into the hands of that foe, and I cell upon every citizen to prepare for resisting this treason. Here is a flagrant libel, nless it be a solemn truth, in which case it would be my imperative duty to publish it, looking to the truth and my duty for my justification. Here is no deduction from preceding or accompanying statements of facts, but from alleged evidence my possession, and withheld from the public .-But is there any thing like this in the case nov before you? Do not all of you understand, in reading the whole of the article complained of by the plaintiff in this suit, that the passages he ob jects to are the writer's inferences from the ac companying facts? Take the first sentence of my correspondent's letter, which is recited in the declaration as a libel.

"The Circuit Court, now sitting here, is to be chiefly oc cupled with the legal griefs of Mr. Fenimore Cooper who is determined to avenge himself upon the Press for having contributed to his waning popularity as a novelist." See how completely this is qualified by and rest ed upon the undoubted facts stated in the very next

"The 'handsome Mr Effingham' has three causes at is Courier and Enquirer, and one against Mr. Weed, Editor the Albany Evening Jonraal."

Does not every reader readily understand that he first sentence is the writer's inference from the facts stated in the second? Does he not adopt or reject the inference, according as he shall judge of those facts? I trust, gentlemen, that this distinction between a libel uttered and frankly expressed conclusion from notorious facts, is as clear o your minds as to mine.

Gentlemen of the Jury, I have been for years an Editor of public journals, and ardently engaged in Political controversy when party feeling raged fiercely. Though always intending to be just, I have often given utterance to harsh judgements of opponents-possibly unjust ones; yet never was a complaint made of my course that I did not conider and endeavor to satisfy. Thus did I in this case, as the evidence before you has established.

Let me endeavor to make the distinction or

which I rely still more palpable. There was lately a famous exhibition of tuffianism, called a Prize-Fight, at Hastings in Westchester County, some twenty miles from New-York, which resulted in the death of a young man, the sole support of a widowed, helpless and destitute mother, and a sister-of tender years. This sacrifice was attended by circumstances of revolting ferocity, calculated to cover all the guilty parties with execration and infamy. Those circumstances I detailed to the public-I depicted them, so far as I could, in all their unnatural horrors-I denounced the sacrifice and its guilty promoters in language as strong as I could command. I held them up to public ignominy and reproach, painting their conduct in the most vivid and hideous colors. Many of these men had committed no offence for which the Law could take hold of them; and yet I sought to call down upon their heads the severest male lictions of a shocked and outraged Public Opinion. Now, if the doctrines assumed in bringing and prosecuting this suit be indeed the Law of the Land, then I am liable to a prosecution for Libel from each one of these actors at Hastings, and they must each recover of me exemplary damages in case I have misstated (as I doubtless have, since I was not at their horrid carnival, and had my information entirely at second-hand,) any circumstance regarding their conduct. Nay, more, Gentlemen: if this construction of law be sound, I am exposed to an indictment on the complaint of each one of them; and you, if acting on the Grand Jury, would be obliged to find a bill against me! But do you not clearly perceive, Gentlemen, that the essential conditions of a libel are wanting in this case ? I was moved, certainly, obviously, by no mallice in this case; I knew nothing per sonally of any of the parties to that dreadful tragedy. I spoke in regard to them what my duty as an Editor seemed to require-what the conservation of the Public Morals appeared imperatively

Take another instance: A vessel arrives at the port of New-York in extreme distress; and here reports that, while in distress, the packet ship Neptune, from New-York to Liverpool, passed her within a cable's length without offering to render any assistance, or even to notice her. (Such an occurrence, though very rare, is not unprecedented on the high seas.) I publish this statement, and comment on the apparent inhumanity of the packet captain. But, two months afterward, the Neptune returns, and her captain declares the harge against him essentially groundless. He did not see the distressed vessel, or did not understand her signal, the weather being thick, or, a severe gale blowing at the time, he found it absolutely impossible to board or keep her company. He comes to me complaining, and I say, "Sir hand me your statement in writing, and I will publish it, giving to it just such credit as it seems to me to deserve, and leaving the public to do the same."-This is my uniform course. I cannot imagine one fairer or more likely to do justice; so frankly avowing it.

nals : if any one can point out a better, I shall he most happy to follow it. I often cannot "retract" the first statement when a counter-statement is made : for, not merely is it the version of the implicated party, but it often does not cover all the ground embraced in the former. I cannot wait, when news of general interest reaches me, until all its details may be judicially established. I publish whatever of it I believe to be true, and trust to should see a large, powerful man holding down Time to enable me, if not wholly true, to correct and beating a feeble and inoffensive one, you would it. I knew well that I am liable to an action for naturally be indignant, and might express your indamages sustained by my misstatement in any lignation without incurring the imputation of macase, however innocently I may have fallen into it. lice. So if you were to see a plaintiff in this Court -I claim no immunity from the proper consepress his cause to a verdict unopposed, while the quences of my own misjudged or misguided acts defendant was detained away at the bedside of a am here only to contend that the proper remedy lying wife or child, and wholly undefended, you in such a case is not an action for libel; because the malicious intent which the Law supposes and declares necessary in that action is not fairly nor rationally inferrible against the Editor of a public ournal under such circumstances.

I trust, Gentlemen, that you have seen that I laim no immunity at your hands but an immunity from presumptive or legal guilt in a case where all the circumstances forbid the idea of actual guilt; and that the immunity I claim for my profession is one plainly founded in the nature and absolute reason of things, and clearly recognized by the principles and fortified by the positions of the

[ Here followed our legal citations and comments which, since the Judge thought very small beer of them, we will omit, and consider their substance when we come to speak of His Honor's charge. I desire you to consider in the next place, genlemen, that this action for libel is founded on no invasion of the sanctuary of private life. It grew out of a public trial for a libel, on an action brought by the plaintiff in this suit himself, in a Circuit of this Court. That trial was a matter of public interest, and a legitimate subject of newspaper publication; it was my duty to give an account of it for the information of my readers; it was or should have been Mr. Cooper's purpose, in bringing the action, to have the result proclaimed and commented on. An account came to me by Mail, from friend attending the Circuit at Fonda: I read it, believed its statements of facts, and thereupon formed the opinion that its strictures on Mr. Cooper's conduct were warranted by the facts, when a few days afterwards, Mr. Cooper, without writing to me or in any way asking of me a correction of my report, gave public notice that he had directed an action to be commenced against me. waited only till his missive should have reached me. It came, as you will have seen, in the likeness of an olive-branch; and I immediately published Mr. Cooper's own version of the whole matter. In doing so, I intimated no doubt that he was right on all the points of difference as to facts between the two statements. I virtually admitted, and intended to admit, that his statement, being last made and in view of the other, was right on those points. I assumed the correctness of his statements, and then, looking at the whole case from this point of view, I still considered that Mr. Cooper's course at Fonda had not been honerable or magnanimous. So thinking, I so said; and the bare expression of that opinion, in words as temperate as the language affords, forms a part of my alleged offence, and the second count in the declaration on which I am now before you.

Now. Gentlemen of the Jury, it is no part of my case to prove that my opinion was the sound and correct one. It is enough that it was my opinion, and that, being accompanied by Mr. Cooper's version of the facts on which it was avowedly based, it could work no injustice to him. I think I need not argue before you, Gentlemen, that in this Free Land I had a right to cherish an opinion and express it. And yet, Gentlemen, you cannot declare me guilty of Libel in this case vithout assuming that I had no such right, or that this was not my opinion but a pretence-a ground

less and malicious fabrication.

And now, Gentlemen, while I do not here sesume to set up standards of honorable conduct or feeling for the plaintiff or any other man, I do say that if I had stood in Mr. Cooper's place on the trial in question, having sued the Editor of a leading and powerful journal for what I believed a flagrant libel, I could not have felt justified in going to trial in the absence of the defendant-especially an absence caused by the holiest anxieties, the keenest afflictions-either on the first or the second day of the term. If I had resorted to a legal tribunal for the vindication of my character, and not for the paltry dollars I might wring from a poverty-stricken class by a system of legal browbeating and annoyance-I should have desirednay, insisted-that my opponent be confronted with me in the trial, and the defence of which he had given notice be heard. My honor would have been satisfied with no snap-judgement-with no purse, however weighty, torn from the wringing hands of the distracted father as he bent in anguish over a daughter lying at the gates of death .-- And even if I had suspected, as Mr. Cooper strangely professes to have done-though I then knew as I ow know the fact to be otherwise-that the defendant was making domestic afflictions a pretext for protracting his absence, I should still the more have insisted that that defendant be represented in Court, or at least that the longest practicable time be allowed him, that the verdict of my vindication should be not merely triumphant but conclusive beyond cavil.

I will not detain you, Gentlemen of the Jury, by examining in detail all the paragraphs or parts paragraphs which the plaintiff has culled out of my two articles to form the basis of his suit, because I desire you to consider, not detached sentences but the whole matter. No one sentence has any distinct force and significance apart from the rest; for all the judgements of each article rest directly on its facts, and are simple deductions therefrom. Take, for example, the sentence of my correspondent, on which I understand by Mr. Cooper's letter that most stress is laid by this prosecution-

"The value of Mr. Cooper's character, therefore, has been judicially ascertained. It is worth exactly four hundred dollars."

'The value, therefore.' Why 'therefore?'-Simply because of the facts just related-because of the undeniable truth that Mr. Cooper sued a man of ample means for defamation of character in a journal of commanding circulation and influence, pressed his suit to trial in the absence of all defence, and, after evidence and argument on his side and nothing on the other, having every thing his own way, he recovered the precise sum specified. The sentence has no meaning except ss connected with these facts, it has no force, except as it is justified by them. It is precisely as it Mr. Cooper should say that I manifested grest presumption and audacity in coming before you to contest with him this issue-in which case every man would decide for himself whether the facts. warranted the judgement avowedly based upon them. Beyond these, it would have no effect.

I trust, Gentlemen, you will not infer malice on my part from the expression the handsome Mr. Effingham, as applied to Mr. Cooper by my correspendent. That phrase, which is conspicuously let forth in the declarationagainst me, I have not used; yet I regard it only as a harmless pleasantry. It is taken, as you are well aware, from one of Mr. Cooper's own works, where it is applied to a character which the public has generally understood, from certain striking coincidences, as intended by the author to. stand for himself. Mr. Effingham, as you will readily have inferred, is there invested with many other excellencies beside his singular beauty. Iccertainly can harm no man to ascribe to him such a character. Indeed, I have hardly supposed a criticism or jest on the personal comeliness of a party actionable at all. I am well aware that Mr. Cooper, since our meeting at this Circuit, has decidedly expressed the opinion that I am personally the reverse of handsome '-which is much worse than a contrary opinion-and, though I cannot admire his taste, I not the least inclination to take the law of him for